

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1381 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SABIRMIYA HUSSAINMIYA MALIK

Versus

STATE OF GUJARAT

Appearance:

Mrs. Banna Dutta with MR BHARAT T RAO for Petitioner
Mr H L Jani, APP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 20/08/98

ORAL JUDGEMENT

Heard the learned Advocate for the parties. The petitioner-Sabbirmiya H Malik was asked to show cause under Section 59 of the Bombay Police Act in February, 1997 to execute before passing order under sections 55, and 56 or 57 of the Bombay Police Act. After hearing the petitioner, the authorities passed the order of

externment on 22.7.97. The said order has been confirmed by order dated 29.9.1997.

2. It is contended by the learned Advocate for the petitioner that there is total non-application of mind on the part of the externing authority as the order of externment under section 56(b) of the Bombay Pollce Act, though the alleged offence was under the Gambling Act. It is submitted that a person can be externed under section 57 of the Bombay Police Act only when a person has been convicted under the Gambling Act. It is not in dispute that the petitioner has not been convicted under the Gambling Act. The learned AGP is not in a position to refute the contention.

3. In view of the aforesaid, this Speciala Criminal Application is allowed and the order of externment dated 22.7.1997 as confirmed by the Appellate Authority dated 29.9.1998 are quashed and set aside. Rule made absolute.

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msp.